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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 STEVE MICHAEL COX,) 3:05-cv-00421-HDM-RAM
10 Plaintiff,)
11 vs.) ORDER
12 E.K. McDANIEL, et al.,)
13 Defendants.)
14 _____)

15 The court has considered the report and recommendation of the
16 United States Magistrate Judge (#49) filed on January 29, 2007, in
17 which the Magistrate Judge recommends that this court grant
18 defendants' Fed. R. Civ. P. 12(b)(6) Motion to Dismiss and deny
19 defendants' Fed. R. Civ. P. 12(b)(7) Motion to Dismiss (#40).
20 Plaintiff opposed defendants' motion (#42), and defendants replied
21 (#43). No objections to the report and recommendation have been
22 filed, and the time for filing any objections has expired.

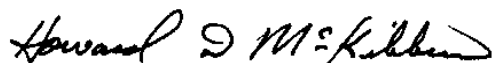
23 The court has considered the pleadings and memoranda of the
24 parties and other relevant matters of record and has made a review
25 and determination in accordance with the requirements of 28 U.S.C.
26 § 636 and applicable case law, and good cause appearing, the court

hereby

ADOPTS AND ACCEPTS in part and **MODIFIES** in part the report and recommendation of the United States Magistrate Judge (#49). The court **AFFIRMS** the report as to defendants' 12(b)(7) motion. Accordingly, defendants' motion to dismiss for failure to join an indispensable party is **DENIED** (#40). The court also **AFFIRMS** that portion of the report that recommends the court grant defendants' 12(b)(6) motion, thereby dismissing defendants Theodore D'Amico, Steven MacArthur, and William Book from Count IX, and defendants D'Amico, MacArthur, and Lewis Winter from Count X. Further, the report is **MODIFIED** inasmuch as the court finds that a fourth defendant, Kenneth Smith, was not named in Count IX and should also be **DISMISSED** pursuant to the defendants' motion. Accordingly, the defendants' motion to dismiss the above-named defendants for failure to state a claim upon which relief can be granted is **GRANTED**.

IT IS SO ORDERED.

DATED: This 16th day of February, 2007.



UNITED STATES DISTRICT JUDGE